

SENATE RECORD VOTE ANALYSIS

106th Congress
1st Session

Vote No. 91

April 26, 1999, 5:31 p.m.
Page S-4168 Temp. Record

Y2K LAWSUIT ABUSE PROTECTIONS/Cloture, motion to proceed

SUBJECT: Y2K Act . . . S. 96. Lott motion to close debate on the motion to proceed.

ACTION: CLOTURE MOTION AGREED TO, 94-0

SYNOPSIS: As reported, S. 96, the Y2K Act, will enact numerous reforms to protect companies from abusive litigation related to year 2000 (Y2K) computer date change problems. Without passage of this reform bill, litigation costs could reach \$1 trillion (12 percent of the entire United States' economy), potentially crippling the competitiveness of the United States' high technology industry and raising costs for consumers and for all businesses that use computers and automated systems.

On April 22, 1999, Senator Lott moved to proceed to S. 96. Senator Hollings objected. Senator Lott then sent to the desk, for himself and others, a motion to close debate on the motion to proceed.

NOTE: The Senate agreed by voice vote to the motion to proceed on April 27.

Those favoring the motion to invoke cloture contended:

When January 1, 2000 arrives, computer systems around the world are going to fail because their programming is written to handle years as 2 digits rather than as 4. Programs will interpret the "00" entered for the year 2000 in those programs as meaning the year 1900. Some companies have been preparing for the problem; others have not. Businesses that are interrelated, relying on each other for supplies or services, will find that they are unable to operate if just one link in their business chain is unprepared and its computers fail. The costs of fixing all of the programming, or of buying new computers and software that are Y2K compliant, are enormous. Chase Manhattan Bank alone is spending \$250 million to fix its 200 million lines of affected computer code. Congress has already passed legislation to try to get businesses to work together, sharing information, to fix as many problems as possible before the date change.

Businesses, though, have had an understandable reluctance to discuss any Y2K problems they have. Their fear is lawsuits.

(See other side)

| YEAS (94) | | | | NAYS (0) | | NOT VOTING (6) | |
|----------------------------|---------------|---------------------------|-------------|--------------------------|------------------------|-------------------------|--------------------------|
| Republican (53 or 100%) | | Democrats (41 or 100%) | | Republicans (0 or 0%) | Democrats (0 or 0%) | Republicans (2) | Democrats (4) |
| Abraham | Helms | Akaka | Kennedy | | | Hutchison- ² | Biden- ² |
| Allard | Hutchinson | Baucus | Kerrey | | | Murkowski- ² | Boxer- ² |
| Ashcroft | Inhofe | Bayh | Kerry | | | | Lautenberg- ² |
| Bennett | Jeffords | Bingaman | Kohl | | | | Moynihan- ^{3AY} |
| Bond | Kyl | Breaux | Landrieu | | | | |
| Brownback | Lott | Bryan | Leahy | | | | |
| Bunning | Lugar | Byrd | Levin | | | | |
| Burns | Mack | Cleland | Lieberman | | | | |
| Campbell | McCain | Conrad | Lincoln | | | | |
| Chafee | McConnell | Daschle | Mikulski | | | | |
| Cochran | Nickles | Dodd | Murray | | | | |
| Collins | Roberts | Dorgan | Reed | | | | |
| Coverdell | Roth | Durbin | Reid | | | | |
| Craig | Santorum | Edwards | Robb | | | | |
| Crapo | Sessions | Feingold | Rockefeller | | | | |
| DeWine | Shelby | Feinstein | Sarbanes | | | | |
| Domenici | Smith, Bob | Graham | Schumer | | | | |
| Enzi | Smith, Gordon | Harkin | Torricelli | | | | |
| Fitzgerald | Snowe | Hollings | Wellstone | | | | |
| Frist | Specter | Inouye | Wyden | | | | |
| Gorton | Stevens | Johnson | | | | | |
| Gramm | Thomas | | | | | | |
| Grams | Thompson | | | | | | |
| Grassley | Thurmond | | | | | | |
| Gregg | Voinovich | | | | | | |
| Hagel | Warner | | | | | | |
| Hatch | | | | | | | |

EXPLANATION OF ABSENCE:

1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

Compiled and written by the staff of the Republican Policy Committee—Larry E. Craig, Chairman

Already, even though we are more than 8 months away from the problems starting, 80 lawsuits have been filed alleging Y2K harm, and many of those suits are class-action lawsuits seeking enormous damages. Many large companies that are now Y2K compliant have begun severing business ties with smaller companies that cannot prove that their systems are compliant. A large part of the reason is that they do not want to be associated with any company that could be sued for massive damages because they could then be forced to pay those damages under joint and several liability. Businesses that are required to give information to the Securities and Exchange Commission have been giving the most bare-boned, uninformative descriptions of their Y2K problems as they can get away with because they do not want any of their words to be twisted against them in predatory lawsuits. The potential for abuse is huge. Some estimate that the cost of Y2K litigation, without reforms, could run as high as \$1 trillion. That high a cost would drain resources from our high-technology industry in particular. Eventually, of course, all of the costs of higher litigation would be passed on to consumers. A huge share of the money would end up in trial lawyers' pockets, businesses would be bankrupted, and American's would shoulder, in effect, a new, \$1 trillion tax.

The goals of this bill are modest. No permanent tort reform will be attempted. All that will be enacted will be temporary, focused reforms that will concentrate exclusively on Y2K issues. Once we proceed to the bill, a substitute amendment will be offered that contains numerous compromises that have been negotiated with Senators who are anxious to pass this bill but who feel that its restrictions on legal actions are too tight. We assure our colleagues that we will not insist on that compromise as an ending place--it should serve as the beginning point for the debate. Further, we are committed to continuing negotiations to find a compromise that has strong support.

High technology companies, the Chamber of Commerce, the National Federation of Independent Business (which represents more than 600,000 small businesses), and the American Insurance Association all strongly support passage of this bill. Who is against it? All of the lawyer groups are. Lawyers claim that they oppose this bill because they want to defend small businesses. Small businesses, though, are saying they do not want or need that help. They would rather fix problems than spend years in court, making lawyers rich and their businesses poor. The lawyers are not entirely alone, though. They contribute huge sums of money to Democratic candidates, and many Democratic Senators (though not all) are quick to defend their every whim. As a result, the trial lawyer lobby has been able to kill numerous tort reform efforts over the years, including in the areas of product liability and medical liability. As strong as that lobby is, it has not been able to stop all reforms. Aircraft liability reform legislation finally passed over its objections (though not until lawsuits had wiped out 90 percent of small plane manufacturing in the United States), and, more recently, securities litigation reform was enacted. When the case is overwhelming, and when the remedies are focused, reforms have been possible. We believe that based on this history that reforms are possible in this case. The cost of failing to respond may prove to be catastrophic for the economy, and, if the remedies are limited enough, strong Democratic support may be gained.

Time is of the essence. Businesses, wisely, are already diverting resources from fixing problems to preparing to defend themselves from lawsuits. They understand the danger. The longer we wait, the less prepared businesses will be, and the higher the costs will be. If we fail to act at all, the end result may well be that we will allow lawyers, through the court system, effectively to impose a \$1 trillion new tax on a \$8.5 trillion economy. That burden must be avoided. We urge our colleagues to vote for cloture.

While favoring the motion to invoke cloture, some Senators expressed the following reservations:

The bill, as reported, is totally unacceptable. The compromise substitute amendment that has been negotiated is better, but it still is not good enough. Some of us are unlikely to accept anything more than a short waiting period from when a problem is first found until it will be permissible to file suit over that problem. That will give the responsible party or parties time to take remedial actions before a suit is filed. Others of us are likely to support broader protections but feel that this bill still goes too far. We need to address this issue very narrowly. No one should see it as a backdoor way to enact so-called product liability reform. Our hope is that an acceptable compromise will be reached. We will vote for cloture and will continue to negotiate with our colleagues.

No arguments were expressed in opposition to the motion to invoke cloture.